

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Rodgson, Inc.

Licensee of Radio Station

WSDQ (AM)

Dunlap, TN

Facility ID #67280

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) File No. EB-09-AT-0038
)
) NAL/Acct. No. 201032480002
)
) FRN 0007676935
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FORFEITURE ORDER

Adopted: October 25, 2010

Released: October 27, 2010

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of five thousand five hundred dollars (\$5,500) to Rodgson, Inc. (“Rodgson”), licensee of station WSDQ(AM), in Dunlap, Tennessee, for willful and repeated violation of Sections 11.35, 73.49 and 73.3526 of the Commission’s Rules (“Rules”).¹ The noted violations involve Rodgson’s failure to: (1) maintain operational Emergency Alert System (“EAS”) equipment; (2) enclose the base of its AM antenna structure within a locked fence; and (3) maintain and make available a public inspection file at its main studio.

II. BACKGROUND

2. On August 19, 2009, agents from the Enforcement Bureau’s Atlanta Office (“Atlanta Office”), accompanied by the station’s general manager and other station staff, inspected the main studio of radio station WSDQ(AM). The agents found that the station’s installed EAS receivers were not receiving audio from any monitoring assignment. Neither the station staff nor the general manager knew how to send an EAS test,² and there were no EAS logs to confirm recent EAS functionality.³ The general manager and station staff admitted that the EAS equipment had not worked for at least a year.

3. The agents asked to inspect the station’s public inspection file and were told by the station staff and general manager that there was no public inspection file and that the station never had one. Furthermore, the station personnel were not familiar with the public inspection file requirements, and no one could produce any of the documents required to be in the public inspection file.

3. The agents, accompanied by the general manager, also inspected the station’s antenna tower fence. The general manager admitted that he had not visited the tower site in a long time. The agents observed that the station’s antenna tower was energized during operating hours and therefore had

¹ 47 C.F.R. §§ 11.35, 73.49, 73.3526.

² At the time of the inspection, the station’s EAS equipment was incapable of sending a test over the air.

³ The only evidence of functional EAS equipment at the station was an old EAS log from 1997.

radiofrequency potential at its base. The agents observed that the lower planks of the wooden fencing surrounding the tower were missing and thus provided access to the base of the antenna structure. The agents also found that the gate for the fence was removed from its hinges and was propped up against the gate opening. There was no evidence of a working locking mechanism, except for a rusted metal linked chain that was wrapped around one end of the wooden gate and hung from a nail on the support post. Moreover, the agents did not observe any perimeter property fence.

4. On January 11, 2010, the Atlanta Office issued a *Notice of Apparent Liability for Forfeiture* to Rodgson in the amount of twenty-five thousand dollars (\$25,000), for the apparent willful and repeated violation of Sections 11.35, 73.49 and 73.3526 of the Rules.⁴ Rodgson submitted a response to the *NAL* requesting reduction or cancellation of the proposed forfeiture based on its inability to pay. Rodgson's response does not dispute the violations identified in the *NAL*.

III. DISCUSSION

5. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ Section 1.80 of the Rules,⁶ and The Commission's *Forfeiture Policy Statement*.⁷ In examining Rodgson's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸ As discussed below, we conclude that the forfeiture should be reduced to \$5,500 based on Rodgson's documented inability to pay the proposed forfeiture.

6. Every broadcast station is part of the nationwide EAS network and is categorized as a participating national EAS source unless the station affirmatively requests authority to refrain from participation, and that request is approved by the Commission.⁹ The EAS enables the President and state and local governments to provide immediate and emergency communications and information to the general public.¹⁰ State and local area plans identify local primary sources responsible for coordinating carriage of common emergency messages from sources such as the National Weather Service or local emergency management officials.¹¹ Required monthly and weekly tests originate from EAS Local or State Primary sources and must be retransmitted by the participating station. As the nation's emergency

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 201032480002 (Enf. Bur., Atlanta Office, rel. January 11, 2010) ("*NAL*").

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997) ("*Forfeiture Policy Statement*"), recon. denied, 15 FCC Rcd 303 (1999).

⁸ 47 U.S.C. § 503(b)(2)(E).

⁹ 47 C.F.R. §§ 11.11, 11.41. Rodgson states that it thought that it was not participating in the EAS network. However, it could not locate a non-participating national authorization letter from the Commission. See 47 C.F.R. § 11.41(b).

¹⁰ 47 C.F.R. §§ 11.1, 11.21.

¹¹ 47 C.F.R. § 11.18. State EAS plans contain guidelines that must be followed by broadcast and cable personnel, emergency officials and National Weather Service personnel to activate the EAS for state and local emergency alerts. The state plans include the EAS header codes and messages to be transmitted by the primary state, local and relay EAS sources.

warning system, the Emergency Alert System is critical to public safety, and we recognize the vital role that broadcasters play in ensuring its success. The Commission takes seriously any violations of the Rules implementing the EAS and expects full compliance from its licensees.

7. Section 11.35 of the Rules requires all broadcast stations to ensure EAS encoders, decoders and attention signal generating and receiving equipment are installed and operational so that monitoring and transmitting functions are available during the times the stations are in operation.¹² On August 19, 2009, agents from the Atlanta Office observed that the station's EAS equipment was not installed such that its transmit and receive functions were fully operational. The only evidence of functional EAS equipment at the station was an old EAS log from 1997; there was no other evidence to demonstrate any EAS activity at the station after 1997. Moreover, station personnel were not familiar with EAS operations or how to send an EAS test. The station's general manager also admitted at the time of the inspection that the EAS equipment had not worked for at least a year. Based on the evidence before us, we find that Rodgson willfully¹³ and repeatedly¹⁴ violated Section 11.35(a) of the Rules by failing to ensure that EAS equipment was operational when the station was in operation.

7. Section 73.49 of the Rules states that "antenna towers having radio frequency potential at the base...must be enclosed within effective locked fences or other enclosures."¹⁵ Rodgson's tower was energized during operating hours and therefore had radio frequency potential at its base. On August 19, 2009, agents from the Atlanta Office observed that the wooden fence surrounding the station's antenna structure was missing its lower planks and thus provided access to the tower base. The fence was in such a condition of disrepair at the time of the FCC's inspection so as to have been ineffective for more than one day and the station's general manager admitted that he had not visited the tower site in a long time. In addition, the gate for the fence was removed from its hinges and propped up against the gate opening. The gate's rusty chain, which may have previously served as a lock, did not appear to have been functional as a locking mechanism for quite some time. The agents also did not observe a fence around the perimeter of the property. Thus, based on the evidence before us, we find that Rodgson willfully and repeatedly violated Section 73.49 of the Rules by failing to maintain an effective locked fence or other enclosure at the base of the station's antenna tower.

8. Section 73.3526 of the Rules states that "[e]very permittee or licensee of an AM, FM, TV or a Class A station in the commercial broadcast services shall maintain a public inspection file containing material outlined in this section."¹⁶ The public inspection file shall be maintained at the main studio of the station and shall be available for public inspection at any time during regular business hours.¹⁷

¹² 47 C.F.R. § 11.35.

¹³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act...." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387, 4388 ¶ 5 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992).

¹⁴ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd at 4388; *Western Wireless Corporation*, 18 FCC Rcd 10319, 10328 n.56 (2003).

¹⁵ 47 C.F.R. § 73.49.

¹⁶ 47 C.F.R. § 73.3526.

¹⁷ 47 C.F.R. §§ 73.3526(b)(1), 73.3526(c).

On August 19, 2009, agents from the Atlanta Office asked to inspect the station's public inspection file at its main studio during normal business hours. The general manager stated that the station never had a public inspection file. The agents found no evidence of a public inspection file at the station and the station's staff was unable to produce any of the required documents. Thus, based on the evidence before us, we find that Rodgson willfully and repeatedly violated Section 73.3526 of the Rules by failing to maintain a public inspection file. We also find that Rodgson willfully violated Section 73.3536 of the Rules by failing to make available a public inspection file.

9. In its response to the *NAL*, Rodgson does not dispute that it violated the rules identified above. Rodgson instead describes the steps it took to correct the violations. The Commission has long held, however, that post-inspection corrective action taken to come into compliance with the Rules is expected, and such corrective action does not nullify or mitigate any prior forfeitures or violations.¹⁸ Rodgson also asserts that it did not intend to violate the rules, and, in the case of the public inspection file rules, was unaware of the requirements. A violation, however, may be "willful" if it is conscious and deliberate, irrespective of any intent to violate the rules.¹⁹ Finally, Rodgson requests reduction or cancellation of the proposed forfeiture, because it asserts the forfeiture amount would pose a financial hardship. It submits its three most recent years of tax returns to substantiate its claim. With regard to an individual's or entity's inability to pay, the Commission has determined that, in general, gross revenues are the best indicator of an ability to pay a forfeiture.²⁰ We have reviewed Rodgson's documentation and conclude that a reduction of the proposed forfeiture is warranted. Accordingly, pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*, we reduce the forfeiture to \$5,500, based on Rodgson's inability to pay the proposed forfeiture.

IV. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission's Rules, Rodgson, Inc. **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of five thousand five hundred dollars (\$5,500) for violations of Sections 11.35, 73.49 and 73.3526 of the Rules.²¹

11. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.²² Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO

¹⁸ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994), *International Broadcasting Corporation*, Order on Review, 25 FCC Rcd 1538 (2010), *Rama Communications, Inc.*, Memorandum Opinion and Order, 24 FCC Rcd 4981 (Enf. Bur. 2009), *Bethune-Cookman College, Inc.*, Forfeiture Order, 24 FCC Rcd 4513 (South Central Region 2009).

¹⁹ See *supra* note 13.

²⁰ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator's gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues).

²¹ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35, 73.49, 73.3526.

²² 47 U.S.C. § 504(a).

63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Rodgson shall also send electronic notification to SCR-Response@fcc.gov on the date said payment is made.

12. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Rodgson, Inc. at its address of record and to its counsel, Larry D. Perry, 11464 Saga Lane, Knoxville, TN 37931-2819.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau